

LEGISLATURE OF NEBRASKA  
NINETY-NINTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 42**

Introduced by Redfield, 12

Read first time January 6, 2005

Committee: Judiciary

A BILL

1 FOR AN ACT relating to liens; to amend sections 52-125, 52-126,  
2 52-127, 52-132, 52-140, 52-141, 52-142, 52-145, 52-154,  
3 52-155, 52-157, and 52-159, Reissue Revised Statutes of  
4 Nebraska; to change provisions relating to the Nebraska  
5 Construction Lien Act; to harmonize provisions; and to  
6 repeal the original sections.  
7 Be it enacted by the people of the State of Nebraska,

1                   Section 1.    Section 52-125, Reissue Revised Statutes of  
2   Nebraska, is amended to read:

3                   52-125.   Sections 52-125 to 52-159 and section 11 of this  
4   act shall be known and may be cited as   the   Nebraska   Construction  
5   Lien Act.

6                   Sec. 2.    Section 52-126, Reissue Revised Statutes of  
7   Nebraska, is amended to read:

8                   52-126.   ~~Sections 52-125 to 52-159~~ The Nebraska  
9   Construction Lien Act creates, and provides for the attachment and  
10   enforceability of, a lien against real estate in favor of a person  
11   furnishing services or materials under a real estate improvement  
12   contract. Except as provided in ~~sections 52-125 to 52-159~~ the act,  
13   no nonconsensual lien arises against real estate by reason of  
14   improvements made thereon.

15                  Sec. 3.    Section 52-127, Reissue Revised Statutes of  
16   Nebraska, is amended to read:

17                  52-127.   ~~As used in sections 52-125 to 52-159~~ For  
18   purposes of the Nebraska Construction Lien Act, unless the context  
19   otherwise requires:

20                  (1) Claimant ~~shall mean~~ means a person having a right to  
21   a lien under ~~sections 52-125 to 52-159~~ the act upon real estate and  
22   includes his or her successor in interest;

23                  (2) Contract price ~~shall mean~~ means the amount agreed  
24   upon by the contracting parties for performing services and  
25   furnishing materials covered by the contract, increased or  
26   diminished by the price of change orders or extras, amounts  
27   attributable to altered specifications, or breach of contract,  
28   including but not limited to defects in workmanship or materials.

1 Liquidation of damages between the owner and a prime contractor  
2 does not diminish the contract price as to other claimants. If no  
3 price is agreed upon by the contracting parties, contract price  
4 ~~shall mean~~ means the reasonable value of all services or materials  
5 covered by the contract;

6 (3) Contracting owner ~~shall mean~~ means a person who owns  
7 real estate and who, personally or through an agent, enters into a  
8 contract, express or implied, for the improvement of the real  
9 estate;

10 (4) Construction lien or lien ~~shall mean~~ means a lien  
11 arising under ~~sections 52-125 to 52-159~~ the act, and ~~shall~~ does not  
12 include a security interest;

13 (5) Notice of commencement ~~shall mean~~ means the notice  
14 specified in section 52-145, whether recorded by an owner or by a  
15 claimant;

16 (6) Notice of termination ~~shall mean~~ means a notice  
17 terminating a notice of commencement;

18 (7) Prime contract ~~shall mean~~ means any real estate  
19 improvement contract made between the contracting owner and a prime  
20 contractor;

21 (8) Prime contractor ~~shall mean~~ means any person who  
22 makes a real estate improvement contract with a contracting owner;

23 (9) Services ~~shall~~ do not include financing or activities  
24 in connection with financing;

25 (10) Construction security interest ~~shall mean~~ means a  
26 security interest created by a security agreement that contains a  
27 legend on the first page clearly stating that it is a Construction  
28 Security Agreement and that secures an obligation which the debtor

1 incurred for the purpose of making an improvement of the real  
2 estate in which the security interest is given if the instrument  
3 recorded to perfect the interest states that it is a construction  
4 security interest;

5 (11) Good faith ~~shall mean~~ means honesty in fact and the  
6 observance of reasonable standards of fair dealing in the conduct  
7 or transaction involved;

8 (12) Judicial proceeding ~~shall mean~~ means action at law  
9 or suit in equity, and any other proceeding in which rights are  
10 judicially determined;

11 (13) To record ~~shall mean~~ means to present to the  
12 register of deeds for the county where the land is situated a  
13 document which he or she accepts and either enters in a daily log  
14 or notes thereon an identifying number, regardless of whether under  
15 applicable law the register of deeds is directed to file the  
16 document or otherwise to maintain a record of it. Recorded and  
17 recording have corresponding meanings;

18 (14) Record location ~~shall mean~~ means the location,  
19 whether book and page, document number, electronic retrieval code,  
20 or other specific place, of a document in the public records  
21 accessible in the same recording office where the document  
22 containing the reference to the location is found; and

23 (15) Security interest ~~shall mean~~ means a consensual  
24 interest in real estate which secures payment or performance of an  
25 obligation.

26 Sec. 4. Section 52-132, Reissue Revised Statutes of  
27 Nebraska, is amended to read:

28 52-132. Notwithstanding the provisions on existence of a

1 construction lien of section 52-131, no lien attaches under  
2 ~~sections 52-125 to 52-159~~ the Nebraska Construction Lien Act to  
3 real estate owned by the state, a county, a municipality, or other  
4 governmental agency or political subdivision.

5 Sec. 5. Section 52-140, Reissue Revised Statutes of  
6 Nebraska, is amended to read:

7 52-140. (1) Except as provided in subsections (2) and  
8 (3) of this section, a lien that has become enforceable as provided  
9 in ~~sections 52-125 to 52-159~~ the Nebraska Construction Lien Act  
10 continues enforceable for two years after recording of the lien.

11 (2) Except as provided in subsection (3) of this section,  
12 if an owner, holder of a security interest, or other person having  
13 an interest in the real estate gives the claimant written demand to  
14 institute a judicial proceeding within thirty days, the lien lapses  
15 unless within thirty days after receipt of the written demand, the  
16 claimant institutes judicial proceedings or records an affidavit  
17 that the total contract price is not yet due under the contract for  
18 which he or she recorded the lien.

19 (3) If a judicial proceeding to enforce a lien is  
20 instituted while a lien is effective under subsection (1) or (2) of  
21 this section, the lien continues during the pendency of the  
22 proceeding.

23 Sec. 6. Section 52-141, Reissue Revised Statutes of  
24 Nebraska, is amended to read:

25 52-141. (1) A lien does not attach to the real estate on  
26 behalf of any claimant claiming through a particular prime  
27 contractor if the owner or the prime contractor has procured from a  
28 surety company authorized to do business in this state a bond

1 meeting the requirements of this section and has recorded a notice  
2 of surety bond.

3 (2) The bond must obligate the surety company, to the  
4 extent of the penal sum of the bond, to pay all sums due to  
5 construction lien claimants other than the prime contractor for  
6 services and materials supplied pursuant to the contract under  
7 which the lien would otherwise arise.

8 (3) The penal sum of the bond shall be not less than:

9 (a) Fifty percent of the contract price, if the prime  
10 contract price is not more than one million dollars;

11 (b) Forty percent of the contract price, if the prime  
12 contract price is more than one million dollars and not more than  
13 five million dollars; and

14 (c) Two million, five hundred thousand dollars, if the  
15 prime contract price is more than five million dollars.

16 (4) The person procuring the bond shall furnish on  
17 request a true copy at cost of reproduction to any claimant and is  
18 liable to the requesting claimant for any damages caused by  
19 failure, without justification, to furnish a copy.

20 (5) A claimant ~~may~~ shall not recover under the bond  
21 provided for in this section unless he or she:

22 (a) Institutes suit against the surety within one year  
23 after the completion of his or her performance or within any longer  
24 period of time permitted by the terms of the bond; and

25 (b) If he or she is a claimant not having a direct  
26 contract relationship with the prime contractor, within ninety days  
27 after completion of his or her performance gives the prime  
28 contractor written notice of the amount due.

1           (6) A claimant having a claim under the bond may proceed  
2 directly against the surety. A judicial proceeding on the bond may  
3 be maintained separately from and without bringing a judicial  
4 proceeding against the prime contractor and without complying with  
5 the notice and recording procedures of ~~sections 52-125 to 52-159~~  
6 the Nebraska Construction Lien Act. In any judicial proceeding  
7 brought on the bond the court shall award to the prevailing party  
8 reasonable attorney's fees and court costs.

9           (7) The obligation of a surety under this section is not  
10 affected by any change or modification of the contract between the  
11 prime contractor and the contracting owner, but the total liability  
12 of the surety may not exceed the penal sum of the bond.

13           Sec. 7. Section 52-142, Reissue Revised Statutes of  
14 Nebraska, is amended to read:

15           52-142. (1) Any person having an interest in real estate  
16 may release the real estate from liens which have attached to it  
17 by:

18           (a) Depositing in the office of the clerk of the district  
19 court of the county in which the lien is recorded a sum of money in  
20 cash, certified check, or other bank obligation, or a surety bond  
21 issued by a surety company authorized to do business in this state,  
22 in an amount sufficient to pay the total of the amounts claimed in  
23 the liens being released plus fifteen percent of such total; and

24           (b) Recording, as provided in section 52-151, a  
25 certificate of the clerk of the district court showing that the  
26 deposit has been made.

27           (2) The clerk of the district court has an obligation to  
28 accept the deposit and issue the certificate.

1           (3) Upon release of the real estate from a lien under  
2 this section, the claimant's rights are transferred from the real  
3 estate to the deposit or surety bond and the claimant may establish  
4 his or her claim under ~~sections 52-125 to 52-159~~ the Nebraska  
5 Construction Lien Act, and upon determination of the claim the  
6 court shall order the clerk of the district court to pay the sums  
7 due or render judgment against the surety company on the bond, as  
8 the case may be.

9           Sec. 8. Section 52-145, Reissue Revised Statutes of  
10 Nebraska, is amended to read:

11           52-145. (1) A notice of commencement ~~must~~ shall be  
12 signed by the contracting owner, be denominated notice of  
13 commencement, and state:

14           (a) The real estate being or intended to be improved or  
15 directly benefited, with a description thereof sufficient for  
16 identification;

17           (b) The name and address of the contracting owner, his or  
18 her interest in the real estate, and the name and address of the  
19 fee simple title holder, if other than the contracting owner; and

20           (c) That if, after the notice of commencement is  
21 recorded, a lien is recorded as to an improvement covered by the  
22 notice of commencement, the lien has priority from the time the  
23 notice of commencement is recorded.

24           (2) The notice of commencement may state its duration,  
25 but if a duration is stated of less than six months from the time  
26 of recording, the duration of the notice is six months. If no  
27 duration is stated, the duration of the notice is one year after  
28 the recording.



1           (3) The notice of commencement may state that it is  
2 limited to a particular improvement project, or portion thereof, on  
3 the real estate. But the limitation is not effective unless the  
4 particular improvement, or portion thereof, to which it applies is  
5 stated with sufficient specificity that a claimant, by reasonable  
6 inquiry, can determine whether his or her contract is covered by  
7 the notice of commencement.

8           (4) A contracting owner may extend the duration of a  
9 notice of commencement by recording before the lapse thereof a  
10 continuation statement signed by him or her which refers to the  
11 record location and date of recording of the notice of commencement  
12 and states the date to which the notice of commencement's duration  
13 is extended.

14           (5) If no notice of commencement applies to an  
15 improvement, any claimant who is entitled to record a lien may  
16 record a notice of commencement denominated notice of commencement,  
17 claimant recording, signed by him or her, stating:

18           (a) In accordance with subsection (10) of this section,  
19 the real estate being or intended to be improved or directly  
20 benefited, with a description thereof sufficient for  
21 identification;

22           (b) The name and address of the contracting owner against  
23 whom the notice of commencement is effective;

24           (c) The name and address of the claimant recording the  
25 notice of commencement;

26           (d) The name and address of the person with whom the  
27 claimant contracted with respect to the improvement;

28           (e) A brief description of the services or materials

1 provided, or to be provided, by the claimant for the improvement;  
2 and

3 (f) That if, after the notice of commencement is  
4 recorded, a lien is recorded as to an improvement covered by the  
5 notice of commencement, the lien has priority from the time the  
6 notice of commencement is recorded.

7 (6) A claimant recording a notice of commencement, not  
8 later than the day it is recorded, ~~must~~ shall send a copy thereof  
9 to the contracting owner. The claimant is liable to the  
10 contracting owner for any damages caused by failure to comply with  
11 this subsection.

12 (7) ~~Sections 52-125 to 52-159 apply~~ The Nebraska  
13 Construction Lien Act applies equally to all notices of  
14 commencement, but as to a notice of commencement recorded by a  
15 claimant:

16 (a) Notwithstanding any stated duration, the duration is  
17 one year after the recording; and

18 (b) The limitation under subsection (3) of this section  
19 is not effective.

20 (8) Unless a notice of commencement is limited to a  
21 particular improvement project, or portion thereof, it covers all  
22 improvements made on the real estate described therein whether or  
23 not they were contemplated at the time of the recording.

24 (9) Unless a notice of commencement provides otherwise,  
25 it covers improvements made on real estate not owned by the  
26 contracting owner if, under subsection (4) of section 52-133, a  
27 lien arises against the contracting owner's real estate described  
28 in the notice of commencement as a result of the improvements.

1           (10) A notice of commencement recorded by a claimant  
2 under subsection (5) of this section may describe all or any part  
3 of the contracting owner's real estate being improved or directly  
4 benefited.

5           Sec. 9.     Section 52-154, Reissue Revised Statutes of  
6 Nebraska, is amended to read:

7           52-154.   (1) A lien provided by ~~sections 52-125 to 52-159~~  
8 the Nebraska Construction Lien Act may be discharged of record by:

9           (a) Recording a signed statement of the record claimant  
10 stating that the lien is released;

11          (b) Failing to record, within the time prescribed in the  
12 provisions on duration of lien under section 52-140, an affidavit  
13 that the total contract price is not yet due;

14          (c) Recording the original or certified copy of a final  
15 judgment or decree of a court of competent jurisdiction so  
16 providing; or

17          (d) Recording, as provided in section 52-151, a  
18 certificate of the clerk of the district court showing the deposit  
19 of substitute collateral.

20          (2) The lien claimant of record by partial release may  
21 reduce the amount of the lien claimed in the notice of lien or  
22 limit the notice of lien to a portion of the real estate described  
23 in the notice of commencement by recording an amendment to his or  
24 her lien showing the reduction in amount or limited portion of the  
25 real estate against which a lien is claimed.

26          (3) A statement under subdivision (1)(a) of this section  
27 or a judgment under subdivision (1)(c) of this section must refer  
28 by record location to the notice of lien to which it applies.

1           Sec. 10.   Section 52-155, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           52-155.   (1) Except as otherwise provided in this  
4 section, the rules applicable to a civil action apply to a  
5 proceeding to foreclose liens under ~~sections 52-125 to 52-159~~ the  
6 Nebraska Construction Lien Act.

7           (2) In a proceeding to foreclose a lien under the act,  
8 all claimants having recorded liens may join as plaintiffs and  
9 those who do not join as plaintiffs may be joined as defendants.  
10 Any person who records a lien or acquires an interest in real  
11 estate after the commencement of the foreclosure proceeding may be  
12 made a defendant before judgment.

13           (3) The court shall determine the amount due or owing to  
14 each claimant and direct foreclosure of the liens against the real  
15 estate. Foreclosure may be by any method available for foreclosure  
16 of security interests in real estate, or otherwise, as ordered by  
17 the court.

18           Sec. 11.   (1) Payment by a contracting owner to a prime  
19 contractor of all sums due such prime contractor pursuant to a  
20 residential real estate contract for the costs of improvement of  
21 real property discharges any construction lien filed, or  
22 extinguishes the right to file any lien not yet filed, by such  
23 prime contractor for all money due such prime contractor, including  
24 any obligations to any subcontractors, material suppliers, or  
25 laborers in privity of contract with the prime contractor rather  
26 than the contracting owner. In addition, such a payment by a  
27 contracting owner to a prime contractor also discharges any  
28 construction lien filed, or extinguishes the right to file any lien

1 not yet filed, by any secondary subcontractor, not in privity of  
2 contract with the contracting owner or prime contractor, for all  
3 money due such secondary subcontractor, which secondary  
4 subcontractor is in privity of contract with another subcontractor  
5 who is in privity of contract with a prime contractor rather than  
6 the contracting owner. Furthermore, such a payment by a  
7 contracting owner to a prime contractor also discharges any lien  
8 filed, or extinguishes the right to file any lien not yet filed, by  
9 any material suppliers or laborers in privity of contract with such  
10 secondary subcontractor.

11 (2) Payment by a contracting owner to a subcontractor of  
12 all sums due such subcontractor pursuant to a residential real  
13 estate contract costs of improvement of real property discharges  
14 any lien filed, or extinguishes the right to file any lien not yet  
15 filed, by such subcontractor for all money due such subcontractor,  
16 including any obligations to any subcontractors, material  
17 suppliers, or laborers in privity of contract with the  
18 subcontractor rather than the contracting owner.

19 (3) Payment by a contracting owner to a material supplier  
20 of all sums due such material supplier pursuant to a residential  
21 real estate contract for costs of improvement of real property  
22 discharges any lien filed, or extinguishes the right to file any  
23 lien not yet filed, by such material supplier for all money due  
24 such material supplier, including any obligations to any  
25 subcontractors, material suppliers, or laborers, in privity of  
26 contract with the material supplier rather than the owner.

27 (5) Such payments by a contracting owner of all sums  
28 contractually due shall be deemed to include, but not be limited

1 to, all benefits and wages due.

2           (6) A payment by a contracting owner that discharges any  
3 lien filed or extinguishes the right to file any lien not yet filed  
4 satisfies any and all underlying claims for money due in connection  
5 with such lien. For any sum as to which a lien or the right to  
6 file a lien has been discharged or extinguished pursuant to this  
7 section, no action or proceeding to recover such sum shall be  
8 brought against a contracting owner by a lienor who has failed to  
9 establish a valid lien in an action or proceeding brought pursuant  
10 to the Nebraska Construction Lien Act. A payment made by the  
11 contracting owner pursuant to this section constitutes a defense to  
12 any action or proceeding brought pursuant to the provisions of any  
13 other law to recover any sum representing an obligation for which a  
14 lien could be filed pursuant to the act.

15           Sec. 12.     Section 52-157, Reissue Revised Statutes of  
16 Nebraska, is amended to read:

17           52-157.   (1) If a person is wrongfully deprived of  
18 benefits to which he or she is entitled under ~~sections 52-125 to~~  
19 ~~52-159~~ the Nebraska Construction Lien Act by conduct other than  
20 that described in section 52-156:

21           (a) He or she is entitled to damages; and

22           (b) The court may make orders restraining the owner or  
23 other person, or ordering them to proceed on appropriate terms and  
24 conditions.

25           (2) If in bad faith a claimant records a lien, overstates  
26 the amount for which he or she is entitled to a lien, or refuses to  
27 execute a release of a lien, the court may:

28           (a) Declare his or her lien void; and

1           (b) Award damages to the owner or any other person  
2 injured thereby.

3           (3) Damages awarded under this section may include the  
4 costs of correcting the record and reasonable attorney's fees.

5           Sec. 13. Section 52-159, Reissue Revised Statutes of  
6 Nebraska, is amended to read:

7           52-159. Whenever in the statutes of Nebraska, unless the  
8 context otherwise requires, the term mechanic's lien or words  
9 referring to such term occur they shall be taken to mean and apply  
10 to construction lien as used in ~~sections 52-125 to 52-159~~ the  
11 Nebraska Construction Lien Act. ~~The Revisor of Statutes shall~~  
12 ~~substitute the appropriate term or words in the statutes~~  
13 ~~necessitated by this section.~~

14           Sec. 14. Original sections 52-125, 52-126, 52-127,  
15 52-132, 52-140, 52-141, 52-142, 52-145, 52-154, 52-155, 52-157, and  
16 52-159, Reissue Revised Statutes of Nebraska, are repealed.